

## Message Text

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70

ORIGIN TRSE-00

INFO OCT-01 NEA-10 ISO-00 EB-07 L-03 AID-05 CIAE-00 INR-07

NSAE-00 SP-02 COME-00 XMB-02 FRB-03 OPIC-03 CIEP-01

INRE-00 NSCE-00 SSO-00 /044 R

DRAFTED BY TREAS: CBAZARIAN  
APPROVED BY NEA/ARP:FMDICKMAN  
TREAS:MCFADDEN  
TREAS:PATRICK  
TREAS:WITHERELL  
TREAS:ALTHEIM  
TREAS:GERARD  
TREAS:PARSKY

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O 252212Z JUL 75  
FM SECSTATE WASHDC  
TO AMEMBASSY JIDDA IMMEDIATE

C O N F I D E N T I A L STATE 176316

E.O. 11652: GDS

TAGS: EFIN, SA, US

SUBJECT: RESPONSE TO SAMA CONCERNS OVER IRS RULING

REF: A. JIDDA 05055

1. WITH REFERENCE TO (PARA 1 AND 5) IT IS TRUE THAT THE NEW RULING UNDER SECTION 892 DOES NOT MEAN THAT SAMA ITSELF AND/OR ITS INVESTING AGENTS HAVE BEEN FOUND BY IRS TO BE EXEMPT ON CERTAIN INCOME FROM A U.S. TAX. IT MEANS THAT IF SAMA MEETS THE CRITERIA SET FORTH ITS INVESTMENTS WOULD BE EXEMPT. IF SAMA WISHES TO BE ABLE TO STATE THAT IT SPECIFICALLY IS EXEMPT, A RULING REQUEST DESCRIBING ITS U.S. ACTIVITIES SHOULD BE FILED.

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2. A RULING BY THE IRS WOULD NOT COVER A CHANGE IN CIRCUMSTANCES OF AN INVESTMENT OR PATTERN OF U.S. ACTIVITIES SUBSEQUENT TO THE RULING.

3. WITH REGARD TO YOUR FIRST AND SECOND QUESTION (PARA 2), THE PUBLISHED RULING IMPLIES THAT NON-PASSIVE INVESTMENTS OR ACTIVITIES OF A DE MINIMIS BASIS IN THE U.S. WOULD NOT THREATEN THE STATUS OF ALL OTHER INVESTMENTS. THERE

IS, THEREFORE, SOME LEEWAY. HOWEVER, THE EXTENT OF THIS LEEWAY HAS NOT YET BEEN DEFINED.

4. WITH REGARD TO YOUR THIRD QUESTION (PARA 2), IT APPEARS THAT SUBSTANTIAL NON-PASSIVE INVESTMENT COULD AFFECT SAMA'S WHOLE STATUS.

5. WITH RESPECT TO YOUR QUESTION (PARA 3), WHEN A BANK IS MERELY ACTING AS AGENT FOR SAMA'S INVESTMENTS, SAMA WOULD STILL BE ENTITLED TO THE EXEMPTION. IF INVESTORS ARE WILLING, SAMA COULD SET UP PROCEDURES WHICH WOULD SAFEGUARD THE INVESTMENT BY HAVING THE INVESTING AGENT INDEMNIFY THEM IN CASES IN WHICH NON-PASSIVE INVESTMENTS WERE MADE IN VIOLATION OF THEIR INSTRUCTIONS.

6. THE INITIAL CLARIFICATION OF THE BASIC GOVERNMENTAL EXEMPTION THAT WAS EMBODIED IN THE PROPOSED RULING WILL REQUIRE ADDITIONAL ADMINISTRATIVE REFINEMENT. PRESUMABLY SAMA'S U.S. LEGAL ADVISORS CAN GUIDE THEM AS TO STEPS TO MINIMIZE THEIR RISKS AND COULD RAISE INTERPRETIVE QUESTIONS DIRECTLY WITH IRS. IF SAMA'S INVESTMENT POLICY WERE TO DEVELOP LATER IN A DIRECTION THAT INVOLVES IT IN MAJOR ACTIVE BUSINESS OPERATIONS IN THE UNITED STATES, THE EXISTING AND FUTURE PASSIVE INVESTMENTS COULD ALWAYS BE PLACED IN A SEPARATELY ORGANIZED SAUDI ENTITY WHICH WOULD RETAIN THE PASSIVE INCOME EXEMPTION. IF DESIRED A REQUEST FOR A RULING SHOULD BE SUBMITTED TO THE OFFICE OF ASSISTANT COMMISSIONER (TECHNICAL) INTERNAL REVENUE SERVICE, TREASURY DEPARTMENT, 1111 CONSTITUTION AVENUE, N.W., WASHINGTON, D.C. 20224.

7. WITH REGARD TO THE STATEMENT OF POLICY (PARA 6) WE CONFIDENTIAL

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WOULD EXPRESS POLICY SLIGHTLY DIFFERENTLY. OUR POLICY IS TO AVOID ALL UNNECESSARY RESTRICTIONS ON THE FLOWS OF FOREIGN INVESTMENT. THE FACTORS AFFECTING POTENTIAL SAUDI INVESTMENTS ARE GIVEN SPECIAL ATTENTION BECAUSE OF THEIR POTENTIAL SIZE AND THEIR POSSIBLE IMPORTANCE TO US-SAUDI RELATIONS. NEVERTHELESS, THE US GOVERNMENT WOULD BE AGAINST PROVIDING SPECIAL INCENTIVES ON TREATMENT OF SAUDI INVESTMENTS VIS-A-VIS INVESTMENTS FROM OTHER COUNTRIES OR DOMESTIC INVESTMENTS. THE DISTINCTION BETWEEN OUR OPEN DOOR, NEUTRAL POLICY TOWARD FOREIGN INVESTMENTS AND ONE OF ACTIVE ENCOURAGEMENT THROUGH SPECIFIC POLICY MEASURES IS IMPORTANT, PARTICULARLY FOR OUR PUBLIC POSTURE DOMESTICALLY AND INTERNATIONALLY. IN THE TAX AREA, THIS

MEANS THAT THE SAUDIS SHOULD NOT EXPECT EXCEPTIONAL TREAT-  
MENT AND SOLUTIONS TO THE POTENTIAL PROBLEMS YOU CITE

MUST BE DEVELOPED WITH THIS CONSTRAINT IN MIND. KISSINGER

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<< END OF DOCUMENT >>

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 26 AUG 1999  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** FOREIGN INVESTMENT, TAXES  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 25 JUL 1975  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** ShawDG  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
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**Enclosure:** n/a  
**Executive Order:** 11652 GDS  
**Errors:** n/a  
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**Review Authority:** ShawDG  
**Review Comment:** n/a  
**Review Content Flags:**  
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Margaret P. Grafeld  
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**To:** JIDDA  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006